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THE LAW COMMISSION

By

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The Setalvad Commission has not arrived too soon. It is a far cry from 1843 when the first Law Commission under Anglo-Indian auspices was appointed under the chairmanship of Lord Macaulay. Momentous changes have occurred in all spheres of Indian life since that date. A Law Commission has been long overdue and the Bar is grateful to the Government for appointing the above Commission. "Better late than never" is a relevant maxim that occurs to the mind.

PERSONNEL.

The personnel of this eleven-man team which includes all shades of legal talent calls for no special notice. Nevertheless, one cannot help expressing the view that it would have been, perhaps, more appropriate that the highest head of the Indian judicial system, namely, the Chief Justice of India, should have been invited to preside over this Commission, especially in view of the very comprehensive nature of the inquiry referred to it, about which more presently. It may be added that in a comparable situation, the British Government would have naturally invited the Lord Chancellor to preside.

TERMS OF REFERENCE.

The terms of reference which are only two in number are too well known to be set out. But, as the Law Minister, Biswas, explained them in Parliament, the inquiry proposed is quite comprehensive and all-embracing. The Law Minister has, in his speech, expanded the first term of reference into four sub-headings and the second into six. It would be observed that there is a great deal of overlapping between the sub-headings. But, one supposes, it is not proper to dissect and scan ministerial pronouncements as one would be disposed to construe a statutory provision. That only shows how comprehensive the enquiry is intended to be. Two more points have to be added in this connection. The Commission has been asked to report by the end of 1956. That, obviously, is far too short a time and at least three years' time would appear to be necessary. It is to be hoped that the term of the Commission would be extended as in the case of the Press Commission

which took more than two years to report. (2) A right to co-opt members has been given to the Commission, but, only for a limited purpose, *i.e.*, when considering work in a State. It would appear to be necessary that the Commission should be given permission to co-opt, upto certain specified limits, and with the previous approval of Government more members for its general work.

Mode of Operation.

The Commission is to function in two Committees, one, to deal with the first term of reference and the second, with the second term of reference. This procedure, if one may say so, appears to be quite convenient. The first Committee with Mr. Setalvad as Chairman is to have overriding control over the entire inquiry and this also seems to be quite proper. One supposes that Mr. P. Satyanarayana Rao is to be the Chairman of the Second Committee. Now follow observations, of a necessarily sketchy nature on the various sub-headings of the Commission's work as outlined by Minister Biswas.

I. Litigation control—Speedy and cheap justice.

The above three objectives are no doubt laudable, but, so far as the first two are concerned, their importance may be over-emphasized. Litigiousness is an evil, but is a necessary one and could not be entirely wiped out. If that is sought to be done, there will be a lamentable reversion to the old state of affairs when each man took the law in his own hands and "tit for tat" was the accepted mode of settling disputes. So far as the last is concerned, its importance can never be exaggerated. Justice in Britain is almost entirely free, thanks to the Magna Carta of 1215. But, for some unintelligible reason, the British, when they were here, evolved an eleborate system of Court-fees—the Court-fees Act (VII of 1870). After 1920, the Provincial Legislatures were given power to amend the Act, themselves. The result has been that the States have come to regard the Court-fees Act and the allied Stamp Act (II of 1899) as quite useful sources of revenue. Resort to Courts has been made today an almost impossible step to be taken by the poor litigant. This process has gone so far that it requires to be curbed. One hopes that the Commission will make a firm recommendation for the entire repeal of the Court-fees Act or, at least, for making it a Central subject and for softening its rigorous. So far as the first point is concerned, namely control over frivolous litigation there are already a number of legal provisions, *e.g.*, section 35-A of Act V of 1908 and many other recent enactments, both Central and State. The Commission's task would be to evolve a unified pattern.

II. Organization of Courts.

It is not quite clear what the subject-matter of this division is. Perhaps, the idea may be to restrict the number of appeals that may be taken in a given cause and to restrict the number of appellate Courts. If that is the idea, it would require considerable thought before it is implemented. The existing gradations of civil Courts and criminal Courts, as well, do not appear to call for any radical transformation.

III. Recruitment to the Judiciary.

This is a major item which requires separate treatment. It is enough to state here that the present mode of recruitment at all levels requires revision and that the power of Government to intervene in the recruitment except for formal ratification of appointments should be strictly regulated.

IV. Level of the Bar and of Legal Education.

The term 'level of the Bar' appears to be rather vague and requires clarification which could be done only when a questionnaire is issued by the Commission. 'Legal education' is a subject which also requires separate treatment.

V. Simplification of Laws.

There could be no doubt that Law, in order to be effective, should be precise and simple in enunciation. This test, simple as it is, is one which many enactments, Central and State and particularly the latter cannot satisfy. Several instances can be given. The Suits Valuation Act (VII of 1887), a Central Act and Madras Act (VI of 1939) are instances of gross defect in drafting. The Central Act, Hindu Women's Rights to Property Act (XVIII of 1937) shows that an enactment containing only three sections could create any amount of confusion and cause the most severe headaches even to the best equipped minds. So far as procedural laws are concerned the recent extensive amendment of the Criminal Procedure Code (V of 1898) goes far in the direction of the simplification and a Bill now before the Parliament to amend the Civil Procedure Code (V of 1908) professes to achieve a similar objective.

VI. Laws—Inconsistency with the Constitution.

There can, again, be no doubt that legal provisions whether existent or to be enacted in future, cannot be inconsistent with the Constitution. It is this idea which clearly underlies Articles 13 and 251 of the Constitution to mention a few instances. The Commission will have an arduous task under this heading.

VII. Anomalies and Ambiguities.

From time to time, judicial decisions reveal several anomalies and ambiguities in existing legal provisions and in the existing state of the law. The task of the Commission herein is, perhaps, the most troublesome and tiresome one. To do this work will take as much trouble and will require as expert a knowledge as one finds taken and applied in the cases of the famous Halsbury's Laws of England and the American Re-statement.

VIII. The Concurrent List.

There is a respectable body of opinion in the country which considers the whole scheme of the Constitution as envisaged in Part XI and the Seventh Schedule of the Constitution as unjustified and unworkable. To contemplate a series of Legislatures legislating on the same subject is not a pleasant experience for the lawyer who aims at uniformity of law throughout India. The experience of the United States of America with its 49 State Legislatures producing a welter and

chaos of legislation has not chastened the minds of the framers of the Constitution. Be that as it may, so long as the Concurrent List remains, it is impossible to prevent legislation by different bodies on the same subject. Here again the Commission's task is not an easy one to discharge.

IX. CONSOLIDATION OF ENACTMENTS.

That country has the best system of law, where its laws can be ascertained at a glance and in a compact form. Legislation in India started from about the middle of the 19th century when the great codes and the great laws, *e.g.*, the Transfer of Property Act (IV of 1882), and the Succession Act (X of 1865), were placed on the statute-book. Every lawyer knows that these great codes have been repeatedly amended and require fresh codification. Civil Procedure Code (V of 1908) has been amended repeatedly and a Bill lies now before the Parliament to amend it again. Section 122 of that Act, which was passed in an unfortunate moment had resulted in a chaos of enactments at the instance of the various High Courts. One would wish that this section 122 were repealed and an unified code were enacted for all India just on the model of the great code of 1859. Similarly, Act IV of 1882, was extensively amended under Acts XX and XXI of 1929 and Act X of 1865 under Act XXXIX of 1925. A general and authoritative redaction of extant law is a desideratum. Article 44 of the Constitution also is a valuable in guide in this context and one is surprised that Article 44 is limited only to a "unform *Civil* Code".

X. PART IV OF THE CONSTITUTION.

This is a rather delicate matter. The Fourth Amendment to the Constitution, like the Third has been intended to enforce the ideas underlying the Directive Principles. The Commission will have neither an easy nor an enviable task under this sub-heading, the object of which is to suggest laws to bring into effect the ideas underlying the "Directive Principles of State Policy."

CONCLUSION.

This note is necessarily brief and sketchy. An ambitious task is set before the Commission. Every lawyer will wish it success. As and when a questionnaire is issued the lawyer will consider it a duty to suggest for consideration of the Commission specific proposals.

Rajamannar, C.J. and Panchapakesa Aiyar, J.
6th July, 1955.

Spl. Land Acquisition Officer *v.* Kanthimathi Mills:
App. No. 195 of 1950.

Land Acquisition Act (I of 1894)—Compensation for well on the land—Separate compensation for the water in the well—When permissible.

Ordinarily under the Land Acquisition Act no compensation is awarded for a well which is situated on land acquired and separately and in addition compensation for the value of the water in the well. There may be exceptional features in certain cases, which might justify a separate award; for instance, where the water in the well is the source of irrigation to other lands of the owner which had not been acquired, or for lands belonging to others from whom the owner might have received money for permitting them to make use of the water. In rare cases, the owner of the well might make a commercial use of the water by selling it out for industrial or domestic consumption. In the absence of such exceptional circumstances on principle no award of compensation for a well in respect of the structure and in addition compensation for the value of the water in the well could be given.

The Government Pleader (*C. A. Vaidialingam*) and *V. Balakrishna Eradi* for Appellant.

A. Narayana Pai for Respondent.

R.M. — *Appeal allowed in part.*

Krishnaswamy Nayudu, J.
12th July, 1955.

Nagammal *v.* Agoramuthu.
S.A. No. 968 of 1951.

Specific Relief Act (I of 1877), section 42—Declaratory suit under—When could be entertained—Declaratory decree—Scope of—Discretion of Courts to grant.

The discretion of Courts in granting declaratory decrees is rather wide, but as in the case of the exercise of any judicial discretion, it must be exercised only when the circumstances of the case require such exercise. In the application of section 42 of the Specific Relief Act to any declaratory suit, it is not a question of the Court having jurisdiction to grant the declaration but the Courts having a discretion in the matter. The question is whether, where a discretion has been exercised, such exercise was in accordance with sound judicial principle. Stress is not to be laid so much on the question of its maintainability as on that of the propriety and utility of granting relief by way of declaration.

Quaere: Whether section 42 of the Specific Relief Act is exhaustive of the reliefs for a declaratory decree?

(1937) 1 M.L.J. 41 and A.I.R. 1950 P.C. 70, referred to.

While it is true that a person cannot sue for a declaration of his right to immoveable property which may never come into existence and a mere contingent right, which may never ripen into an actual existing right is not always a sufficient ground for an action for such a declaration, it cannot be laid down as a general proposition of law that in all cases where a person seeks to obtain a declaration as to property in which he has a contingent interest, such a declaration should not be granted.

I.L.R. 35 Cal. 777, explained.

A.I.R. 1946 Cal. 118, referred to.

K. S. Naidu for Appellant.

K. S. Desikan and *K. Raman* for Respondent.

R.M. — *Appeal dismissed—Leave refused.*

Ramaswami, J.
15th July, 1955.

Govinda Konar *v.* Murugan Transports.
C.R.P. No. 866 of 1953.

Limitation Act (IX of 1908), Articles 7 and 102—Applicability—'Artisan'—Meaning of—Limitation for recovery of wages—Interpretation of statutes—Statute of Limitation—Rule of construction.

Industrial Disputes Act (XIV of 1947)*—Order of reinstatement of a dismissed employee —Order silent about back pay—Jurisdiction of civil Court to entertain suit for arrears.*

Suits for wages of household servants, artisans or labourers fall under Article 7 of Schedule I of the Limitation Act only. Suits for wages not falling under any specific Article of the Limitation Act would be governed by the residuary Article 102.

An artisan is one trained to mechanical dexterity in some mechanical art or trade. A motor-car driver would fall within the category of an artisan and he must therefore sue for his wages within one year from the date when his wages accrued due and he cannot be given the benefit of the longer period under Article 102.

I.L.R. 5 Rang. 477, A.I.R. 1936 Cal. 808, A.I.R. 1936 Lah. 661, referred.

(Domestic servant—Test to determine, discussed.).

Laws of limitation are founded on the noblest policy. Controversies are limited to a fixed period of time lest they should be immortal while men are mortal. Courts of justice should not view in an unfavourable light defence of limitation as unjust and discreditable.

When an Industrial Tribunal under the Industrial Disputes Act directs that a particular employee who has been dismissed should be reinstated, though the order is silent about the arrears of pay till reinstatement from the date of dismissal, a civil Court has jurisdiction to decide the controversy about arrears of pay since reinstatement should necessarily include that he must get back his pay.

A. Ramachandran for *Messrs. Rao and Reddy* for Petitioner.

C. A. Seshagiri Sastri for Respondent.

R.M. ——— *Petition dismissed.*

Rajagopalan, J.
15*th July*, 1955.

Standard Cotton and Silk Wvg. Co., Calicut *v.*
Regional Provident Fund Commr., Madras.
W.P. Nos. 687 and 688 of 1954.

Employees Provident Fund Act (XIX of 1952)*, section* 5*—Scope of—Power of Government to frame a scheme under the Act and to specify the classes of factories to which it will apply under the scheme itself—Employees Provident Fund Scheme,* 1952*—Cl.* 3 *(a) as amended by Ordinance (I of* 1953)*—Validity.*

Section 5 (1) of the Employees Provident Fund Act though it provides for (1) framing and notification of the Provident Fund Scheme and (2) specification of the factories to which the scheme should apply, there is no prohibition in the said sub-section against the specification of the factories being itself part of the scheme framed and notified under that sub-section. What the Government is authorised by section 5 (1) of the Act to do is to issue a notification framing a scheme and specifying the factories to which the scheme should apply. Obviously both the powers of framing a scheme and specifying the factories could be exercised through the medium of a single notification. It would in any event be a necessary and proper matter for the purpose of implementing the scheme within the meaning of item 18 of Schedule II of the Act.

Clause (3) of the Employees Provident Fund Scheme, 1952, as amended in 1953 is a valid provision of the Act, well within the scope of section 6 (2) of the Act read with item 18 of Schedule II of the Act and is *intra vires* and the retrospective effect of the scheme under clause 3 (*v*) is also valid.

V. Balasubramaniam for Petitioner.

The Special Government Pleader (*V. V. Raghavan*) for the State.

R.M. ——— *Petition dismissed.*